

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 396 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JANAKSINGH MAHANSINH

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioner

MR SA PANDYA, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 12/09/97

ORAL JUDGEMENT

R&P has been seen. As per the complaint as well as the material on record, it is clear that what initially could have been a matter of mob attack bringing about serious consequences. The target of the attack was Shri Mohanbai Bhagabhai, the Sarpanch of village Kamrej or other villagers who had gathered to render him some

protection, and due to the presence of the very villagers, the assailants, 20 of them went away. In their attempt to escape, the fury of the village people while going away in the three trucks in which they had come, a driver of a truck while driving it in the aforesaid background, knocked down a villager and his name was Deepakbhai Ishwarbhai Patel, with fatal consequence.

The police initially rightly registered the case to be of rash and negligent driving and also the causing death by negligent act.

However, later on, in place of Section 304-A, 304 IPC and other related Sections were placed and all the 20 alleged assailants were roped in as accused.

Having gone through the record with the help of ld. APP Shri Pandya, it is quite clear that there is no question of it being a matter of attracting Sections 304, 147, 148, 149 and other related Sections of IPC drawn in. It is a case of only of rash and negligent driving and further the negligent act causing death of a person and, therefore, it could be an offence triable under Section 279 as well as Section 304-A of IPC and some related Sections of the Motor Vehicles Act, 1988. Necessarily, therefore, it will have to be in relation to the person who was driving the truck. In the facts and circumstances of the case, it would be Suresh Goswami, accused no.2.

In this background, the application given before the trial Court in Sessions Case No.30 of 1996 at Exh.5 which was not allowed by the ld. Addl. Sessions Judge, by his order dated 8.8.1997 is required to be allowed.

The result, therefore, is that the revision application is accepted. The order below application at Exh.5 dated 8.8.1997 is set aside. The said application is allowed. Though the revision application is filed by only one of the accused, the result will be that all the accused except accused no.2, shall stand discharged for the offences that they are charged with. The accused no.2 stands charged for offences under Sections 279 and 304-A etc. However, it is clarified that as he is not before this Court, before the charge is framed, an opportunity shall be given to him of being heard in that regard.

In the circumstances, the case will cease to be a Sessions triable case and the matter shall, therefore be,

made over to the Court having jurisdiction to try the same. Rule is made absolute accordingly. R&P be sent forthwith and the copy of the order be communicated to the trial Court.

sreeram.